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IN THE

Supreme Court of the United States

October Term, 1982

No. 82-340

WILLIAM GLADSTONE and RODNEY LANG,
doing business as ARTHUR YOUNG & CO.,
and HARLEY-DAVIDSON MOTOR CO., INC.,

Petitioners,

v.

M. BRYCE & ASSOCIATES, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF WISCONSIN, DISTRICT I

BRIEF OF ASSOCIATION FOR SYSTEMS MANAGEMENT AS AMICUS CURIAE

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BRIEF OF ASSOCIATION FOR SYSTEMS MANAGEMENT AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This *amicus curiae* brief is submitted by Association for Systems Management in support of the petition for a writ of certiorari to the Court of Appeals of Wisconsin, District I. The decision of the Court of Appeals is contained in the Appendix to the petition ("App.").

INTEREST OF AMICUS

The petition raises a significant constitutional issue concerning the proper relationship between federal copyright law and state trade secret law. This issue, and therefore the petition, is of considerable importance to the Association for Systems Management.

The Association for Systems Management (ASM) is an International association of information systems and data processing professionals. Founded more than thirty years ago, ASM is a non-profit organization headquartered near Cleveland, Ohio. ASM serves more than 10,000 members in the United States, Canada, and 33 other nations around the world. Membership is derived from a varied cross section of business, industry, government, and academia.

The systems professional – analyst, consultant, educator, or manager – is an agent of change who competently uses systems methodology and its tools and techniques to improve decision making. Systems methodology provides the vehicle for combining knowledge, technology, and innovation. It is a disciplined process of identification, review, analysis, and problem resolution that contributes to quality and productivity through organized systems of procedures, equipment, and training. This process requires selection from a range of disciplines such as voice, image, data, text handling and management. Our members in performance of their duties in their jobs as systems professionals may design, provide, or modify a systems methodology, software program, or process that is innovative, unique, and a very valuable intellectual property.

ASM members rely extensively on both of the doctrines at issue in this case – copyright and trade secrecy – in order to protect their or their employers' substantial capital investments in intellectual property. Indeed, the very value of these materials depends on the extent and enforceability of proprietary rights therein – rights that are defined, in large measure, by copyright and trade secret laws.

The unsettled state of the law concerning the interplay of copyright and trade secret laws make proprietary protection strategies difficult. Substantial investments in intel-

lectual property are needlessly put at risk because ASM members cannot be certain whether invoking federal copyright protection for a work will negate a claim of trade secrecy in that same work. By the same token, the uncertain contours of rights in works for which both copyright and trade secret protection are claimed hinders them in their role as a user of the proprietary works of others.

ASM members have a vital and particularized interest in the unambiguous resolution of the issue raised in the petition.

This case presents the question whether, consistent with the Supremacy Clause, state trade secret protection and federal copyright protection may be obtained simultaneously in a single work. This important question of federal constitutional law has not been, but should be, resolved by this Court.

Resolution of this question by this Court will stem the uncertainty which has plagued businesses that create, license, or use intellectual property, particularly in the area of new informational technologies such as computer software. Many of these newer forms of intellectual property arguably lend themselves to either copyright or trade secret protection because they are "works" of an "author" eligible for copyright under federal law and contain confidential, commercially valuable information eligible for trade secret protection under state law. The creators of such works are faced with the difficult choice whether to invoke one mode of protection, the other, or both. With the interplay betwen copyright and trade secret law the continuing subject of controversy, businesses cannot be certain of their rights and liabilities as delineated by these two doctrines, and substantial economic loss may result from this lack of clarity in the law.

The Board of Directors of the Association for Systems Management issues a statement of responsibilities and a

code of ethics for its members. To paraphrase part of the code, it is each member's responsibility among other

> to maintain and improve sound business practices and foster high standards of professional conduct, to cooperate with others in the interchange of knowledge and ideas for mutual professional benefit, to hold in professional confidence any information gained concerning the business of a fellow member's company, and to refrain from using such information in an unethical manner, and to maintain high personal standards of moral responsibility, character and business integrity.

Resolution of the important constitutional issue presented by the petition will provide additional ethical guidelines to the systems person in maintaining the standards of the profession, as well as supply much needed clarification to the businesses that have invested substantial amounts of capital in the proprietary products affected by this issue.

For the reasons stated above, this Court should grant the petition for a writ of certiorari to the Court of Appeals of Wisconsin, District I.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Brief of Amicus Curiae was mailed by regular U.S. Mail to Andrew O. Riteris, Esq., Michael, Best & Friedrich, 250 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, (414) 271-6560, Attorneys for Respondent, Carl D. Liggio, Esq., General Counsel, Arthur Young & Company, 277 Park Avenue, New York, N. Y. 10172, (212) 407-2399 and Thomas O. Kloehn, Esq., Quarles & Brady, 780 North Water Street, Milwaukee, Wisconsin 53202, (414) 277-5000, Attorneys for Petitioners, this 28th day of September, 1982.

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